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tributory negligence as a matter of law in risking his judgment as to its position in passing it the second time.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 419.]

11. Master and Servant (§ 203 (1)*)—Contributory Negligence and Assumed Risk Distinct Defenses.—Contributory negligence and assumed risk are separate and distinct defences, and the servant may be free from negligence and barred from damages because of an assumption of risk though the accident was due to an unsafe place or an unsafe appliance.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 692.]

12. Master and Servant (§ 288 (2)*)—Assumption of Risk Question for Jury.—In a servant's action for injuries by falling down an unguarded elevator shaft, the question whether he assumed the risk of coemployee's failing to leave the elevator flush with the floor, the elevator door having been broken, was an issue properly regarded as within the province of the jury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 700.]

Appeal from Circuit Court of City of Lynchburg.

Action by J. F. Alvis against Morris & Co., for personal injuries. Verdict and judgment for plaintiff, and the defendant appeals. Reversed, and remanded for new trial.

Volney E. Howard and *Jno. L. Lee*, both of Lynchburg, for appellant.

Harrison & Long, of Lynchburg, for appellee.

DAVIS *v.* HEFLIN.

June 16, 1921.

[107 S. E. 673.]

1. Libel and Slander (§ 75*)—Words Actionable at Common Law May Be Sued on in Any Jurisdiction Where Defendant Found.—Words actionable at common law may be sued on in a common law action in any jurisdiction where defendant may be found.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 295.]

2. Evidence (§ 80 (1)*)—Where Words Defamatory under Statute Were Published in Another State, Plaintiff Must Prove Existence of Similar Statute in Such State.—Where an action for defamation arises upon a statute, and the words were spoken or published in a state other than that in which the action was brought, plaintiff must prove as a fact that a like statute was in force in such other state.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 786.]

3. Libel and Slander (§ 24*)—Direct Personal Defamation without

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Knowledge of Third Persons Held within Statute.—Under Code 1919, § 5781, a direct personal defamation without the knowledge of any third person is in itself a grievous insult which will tend to violence and a breach of the peace.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 262.]

4. Libel and Slander (§ 24*)—Place of Publication Immaterial in Common-Law Action for Defamation.—In a common-law action for defamation, the place of publication is immaterial.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 266.]

Error to Circuit Court, Westmoreland County.

Action by Jos. G. Heflin against H. A. Davis. Judgment for plaintiff, and defendant brings error. Affirmed.

C. O'Connor Goolrick, of Fredericksburg, for plaintiff.

W. W. Butzner, of Fredericksburg, and *George Mason*, of Petersburg, for defendant.

DIRECTOR GENERAL OF RAILROADS (ATLANTIC
COAST LINE R. R.) *v.* LUCAS.

June 16, 1921.

[107 S. E. 675.]

1. Railroads (§ 348 (1)*)—Evidence Sufficient to Sustain Recovery by Automobile Passenger Injured in Collision.—In an action by a passenger in an automobile for injuries in collision with defendant's engine at a crossing, evidence held sufficient to sustain verdict for plaintiff.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 597.]

2. Negligence (119 (6)*)—Contributory Negligence Doctrine Not Available without Compliance with Statute.—Under Code 1919, § 6092, where defendant fails to give notice of intention to rely on plaintiff's contributory negligence as a defense, no statement in writing giving the particulars thereof being filed before commencement of the trial as the statute provides, and there is nothing in plaintiff's testimony disclosing contributory negligence, the rules of law relative to contributory negligence are without application in the case.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 406.]

3. Railroads (§ 327 (12)*)—Automobile Passenger Injured through Own Negligence Cannot Recover.—A plaintiff who is injured while a passenger in an automobile, though having no control over the driver, if his own contributory negligence was an efficient cause of the injury, cannot recover.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 592.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.